

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 97-091

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### 2. Form, Style and Placement in Administrative Code

a. In s. HSS 163.10 (4) (d) 2., the phrase “shall be deemed” should be replaced by the word “is.” Also, in subd. 3., the phrase “deemed valid shall be” should be replaced by the phrase “valid is.”

b. In s. HSS 163.10 (5) (intro.), the phrase “all of” should be inserted following the word “submit.” Also, in sub. (5) (e), either the introductory material should lead grammatically into the following subdivisions or the introductory material should be renumbered as subd. 1. and the remaining subdivisions should be renumbered accordingly.

c. In s. HSS 163.10 (8) (c) (intro.), the phrase “all of” should be inserted after the word “submit.”

d. In s. HSS 163.21 (4) (c), the phrase “that location” should be replaced by the phrase “the location described in par. (b).”

e. In s. HSS 163.23 (3) (intro.), the phrase “under sub. (2)” should be inserted after the phrase “audit results.”

f. In s. HSS 163.24 (3) (a) 1. c., the phrase “x-ray fluorescence (XRF)” is used. Reference to “XRF” also is made in par. (b) and in Appendix A. It is preferable to define both the term “x-ray fluorescence” and the acronym “XRF,” rather than require the reader to search the text of the rule for the meaning of the acronym “XRF.”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Throughout the proposed order, why is “(Pb)” included after the word “lead” only part of the time? For example, see the use of the terms “project designer” and “risk assessor” in s. HSS 163.10 (4) (b). Also, if the only use of “(Pb)” is following the word “lead,” the definition of “(Pb)” could be deleted.

b. In s. HSS 163.01, “he or she” could be replaced with “the person.” [See s. 1.01 (3), Manual.]

c. In s. HSS 163.02 (1) (a), should a court be included in the list of who may have issued an order?

d. In s. HSS 163.02 (2), it appears that “literal” could be deleted.

e. In s. HSS 163.03 (1), should on-site removal of lead-contaminated dust be included in the definition of “abatement” as it is in the federal definition? Also in that subsection, will it be clear to users of the rule what “waste generation” is and how it is related to abatement?

f. In s. HSS 163.03 (8), “or not” should be deleted. [See also sub. (49) (a) and s. HSS 163.26 (1).]

g. In s. HSS 163.03 (26), should the definition of “lead-contaminated dust” indicate how much lead must be included in the dust to be considered lead-contaminated or does any amount of lead suffice?

h. In s. HSS 163.03 (30), the definition of “lead hazard screen” should define what is meant by “limited.”

i. In s. HSS 163.03 (32), the comma should be replaced by “or” or “and.”

j. In s. HSS 163.03 (44), the Note appears to be substantive and should be placed in the text of the rule.

k. In s. HSS 163.04, should this section also describe the potential criminal penalties?

l. In s. HSS 163.10 (2), the descriptions of the disciplines are identical to the definitions for those terms. Consequently, the descriptions appear to be unnecessary and should be deleted.

m. In s. HSS 163.10 (4) (b) 3. d., the comma appearing before the word “registered” should be replaced by the word “or.” [See also par. (c) 3. d.]

n. In s. HSS 163.10 (4) (c) 4., the subparagraphs should each begin with “Have.” Also, in subpar. b., should “or in the building trades” be inserted at the end to conform with 40 CFR s. 745.226 (b) (4)?

o. In s. HSS 163.10 (4) (d) 2., “passing score” should be explained. For example, a cross-reference to s. HSS 163.20 (8) (f) 4. could be included. Also in that subdivision, “the usual” is somewhat casual and could be deleted.

- p. In s. HSS 163.10 (8) (b) 4. a., “do” should be “does.”
- q. In s. HSS 163.12 (1) (intro.), the text does not follow the preceding introductory text. The text should be replaced with a sentence such as “Complete one of the following training courses:”.
- r. In s. HSS 163.12 (2) (b), “and successfully completing” could be deleted since if the person did not yet take the course, the person cannot have successfully completed it.
- s. In s. HSS 163.13 (1) and (2), it appears it would be clearer to replace “responsible employer” with “employer responsible for persons.”
- t. In s. HSS 163.13 (3), should the last sentence include a reference to lead management activities?
- u. In s. HSS 163.13 (4) (b), it may be helpful to insert “lead hazard reduction” before “activity” in the second sentence.
- v. In s. HSS 163.20 (2), “provided” should be inserted before “only.”
- w. In s. HSS 163.20 (7) (c) 1., “participate in” is vague. Does the principal supervisor have to supervise the hands-on activities to ensure they are done correctly?
- x. In s. HSS 163.20 (8) (a) 3., “the” before “Appendix” should be deleted.
- y. In s. HSS 163.20 (8) (c), “goal” and “objective” are synonyms. Only one or the other should be used.
- z. In s. HSS 163.20 (8) (e), it is unclear when a course must have a quality control plan. The phrase at the beginning of the sentence would be clearer as “By January 1, 1998” or “For courses accredited on or after January 1, 1998.” Also in that paragraph, should “annually” be inserted before “reviewing instructor competency”? Annual reviews are required under 40 CFR s. 745.225 (c) (9) (ii).
- aa. In s. HSS 163.20 (8) (f) 3., it is unclear what “job dimension” means.
- ab. In s. HSS 163.20 (9) (b) 1., a unique certificate number is required. Will a system be developed that will help training providers provide unique certificate numbers?
- ac. In s. HSS 163.21 (6) (intro.), “A copy of” should be inserted at the beginning of the sentence.
- ad. In s. HSS 163.21 (6) (k), the sentence should clarify that the state approval letter referred to is a letter from another state.
- ae. In s. HSS 163.23 (2) (a), what are “teaching-to-training” objectives? Should this be clarified?
- af. In s. HSS 163.23 (4), “by notice to the department” should be replaced by “with notice to the department.”

ag. In s. HSS 163.24 (3) (a) 1. a., is it reasonable to require principal instructors to have completed a teaching methods course? Also, why is there a Note relating to developing such a course? It does not seem to be something about which the Bureau of Public Health would have expertise.

ah. In s. HSS 163.25 (1), the word “is” should be replaced by the word “as.”

ai. In s. HSS 163.25 (4), should age discrimination be included?

aj. Section HSS 163.26 does not provide for the expiration of the accreditation of a training course. Is this intentional? The federal regulations provide that such accreditation by the Environment Protection Agency (EPA) expires after four years unless the training provider applies for reaccreditation. [See 40 CFR s. 745.225 (f).]

ak. In s. HSS 163.26 (1), what are “teaching-to-objectives”? Should this be clarified?

al. In s. HSS 163.26, why are the provisions in subs. (2) (d) and (3) (a) dissimilar?

am. In Appendix A, sub. (2) (d), the slash should be replaced with “and.” [See s. 1.01 (9), Manual.]

an. In Appendix A, sub. (2) (f), should “large scale” be inserted before “abatement projects”?

ao. In Appendix A, sub. (4) (j), it may be helpful to insert “relating to abatement” after “Legal and insurance issues.”

## **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

a. In s. HSS 163.10 (3), it appears that the proposed exception for certification to perform lead abatement is broader than what is exempted under federal law. 40 CFR s. 745.220 (b) provides an exception for persons engaging in lead-based paint activities within residential dwellings that they own “unless the residential dwelling is occupied by a person or persons other than the owner or the owner’s immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.” It appears that the federal law could apply in some cases to buildings that are not rented whereas the rule exempts all nonrental situations even if someone other than the owner resides in the dwelling. Further, there is no provision in the proposed exception for a building in which a lead-poisoned child lives.

b. Section HSS 163.24 (3) (a) 1. b. requires a principal instructor to complete lead training required for the discipline which is the subject of the course the instructor will be teaching. Under 40 CFR s. 745.225 (c) (2) (ii), the EPA requires 16 hours of training. Under s. HSS 163.24 (3) (a) 1. b., it appears that an instructor may not always be required to complete at least 16 hours of training.

c. In Appendix A, to comply with 40 CFR s. 745.225 (d), the lead supervisor course topics should include the role and responsibility of supervisors, clearance standards and record

keeping. The lead worker course topics should include the role and responsibility of lead workers. Finally, the lead refresher course should provide a review of the initial course and cover the topics listed in sub. (6) (a) to (c) in addition to the review.